

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Complaint No. R1-2006-0059

Mandatory Minimum Penalties

For

Violation of Waste Discharge Requirements  
Order No. R1-2000-0092b  
NPDES No. CA0022721  
WDID No. 1B83136OHUM

In the Matter of

City of Ferndale Wastewater Treatment Facility

For

Failure to File Monthly Monitoring Reports in a Timely Manner

Humboldt County

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) Section 13385(h) and 13385.1 is issued to the City of Ferndale (hereinafter Discharger) based on a finding of failure to submit four discharge monitoring reports required pursuant to CWC Section 13383 as prescribed in Order No. R1-2000-0092b (NPDES No. CA0022721) and the associated monitoring and reporting program.

The Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board) finds the following:

1. The Discharger owns and operates the City of Ferndale's wastewater treatment facility (hereinafter facility) located at Port Kenyon Road in Ferndale, California. The Discharger discharges up to 3.7 million gallons per day (mgd) of wastewater during winter storms (October through April) and discharges to Francis Creek at its confluence with the Salt River, a tributary of the Eel River (Latitude 40°35'40", Longitude 124°15'44"). The water is susceptible to containing pollutants that can degrade water quality and impact beneficial uses of water, and which are defined as pollutants under the federal Clean Water Act. The pollutants are discharged from the facility into the Salt River, thence into the Eel River, navigable waters of the United States.
2. On November 29, 2000, the Regional Water Board adopted Order No. R1-2000-0092b, which prescribes waste discharge requirements and serves as an NPDES permit (NPDES No. CA0022721) for the discharge of treated wastes from the facility into Francis Creek.

3. Among the provisions in the Discharger's waste discharge requirements are the requirements to implement a discharge monitoring program and to prepare and submit monthly and annual NPDES self-monitoring reports to the Regional Water Board pursuant to the authority of CWC Section 13383.
4. The Regional Water Board received seven of the Discharger's monthly reports significantly past the due dates as follows:

<b>Reporting Period</b>	<b>Due Date</b>	<b>Date Received</b>	<b>Total days late</b>
May 2005	June 15, 2005	1/3/06	202 days
June 2005	July 15, 2005	1/3/06	172 days
July 2005	August 15, 2005	1/3/06	141 days
August 2005	September 15, 2005	1/3/06	110 days
September 2005	October 15, 2005	1/3/06	80 days
October 2005	November 15, 2005	1/3/06	49 days
November 2005	December 15, 2005	3/6/06	81 days

5. CWC Section 13385(h) requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. CWC Section 13385.1(a)(1) identifies the failure to timely file a discharge monitoring report required pursuant to CWC Section 13383 for each complete period of 30 days following the deadline for submitting the report as a "serious violation."

**YOU ARE HEREBY GIVEN NOTICE THAT:**

6. The Executive Officer proposes that the Discharger be assessed a mandatory minimum penalty as follows:

<b>Report Period</b>	<b>1<sup>st</sup> Day of Violation</b>	<b>Mandatory Minimum Penalty</b>
May 05	July 14, 2005	\$18,000
June 05	August 14, 2005	\$15,000
July 05	September 14, 2005	\$12,000
August 05	October 15, 2005	\$9,000
September 05	November 14, 2005	\$6,000
October 05	December 15, 2005	\$3,000
November 05	January 14, 2006	\$6,000
<b>Total</b>		<b>\$69,000</b>

7. CWC Section 13385(l)(1) provides that a portion of mandatory minimum penalties imposed under CWC 13385(h) or (i) may, upon application of the Discharger, and at the discretion of the Regional Water Board, be directed to a supplemental environmental project (SEP) if it meets all of the conditions and is otherwise in accord with the State Water Resources Control Board's Water Quality Enforcement Policy and if the Discharger fully implements the SEP as approved. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to a

supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

8. Pursuant to CWC Section 13323, within 90 days after service of this Complaint on the Discharger, the Regional Water Board shall conduct a hearing on this Complaint. The Regional Water Board will hold a hearing on August 28 and 29, 2006, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint within 30 days of the date of this Complaint. By doing so, the Discharger agrees to:
  - Pay the mandatory minimum penalty of \$69,000 in full to the Waste Discharge Permit Fund within 30 days of the date of this Complaint, or
  - Propose a SEP in an amount up to \$42,000 and pay the balance of the penalty (\$27,000) within 30 days of the date of this Complaint to the Waste Discharge Permit Fund.

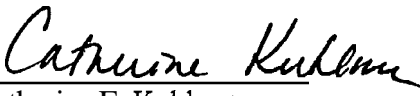
If the Discharger chooses to propose a SEP, it must submit a proposal within 30 days of the date of this Complaint to the Executive Officer for conceptual approval. Any SEP proposal shall conform to the requirements specified in Section IX of the Enforcement Policy. If the proposed SEP is not acceptable, the Executive Officer may allow the Discharger 30 days to submit a new or revised proposal, or may demand that, during the same 30-day period, the Discharger pay the suspended penalty of \$27,000. All payments, including money not used for the SEP, must be payable to the Waste Discharge Permit Fund.

If the Discharger waives the hearing and pays the liability, the resulting settlement may become effective on the next day after the public comment period for this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint, reissued it as appropriate, or take other appropriate action.

If a hearing is held, the Regional Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider enforcement.

9. The Executive Officer shall maintain jurisdiction over approved SEP implementation time schedules throughout the life of the SEP. Any failure to comply with the terms and timelines set out in the approved SEP will result in the full amount of the liability being due and payable immediately. If, given written justification from the Discharger, the Executive Officer determines that a delay in the SEP implementation schedule was beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate.

10. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will ~~be given~~ 30 days to comment on any proposed settlement of this Complaint.
11. In the event the Discharger is required to pay a previously suspended penalty amount, payment of the previously suspended penalty amount does not relieve the Discharger of the independent obligation take necessary actions to achieve compliance.
12. Notwithstanding the issuance of this Order, the Regional Water Board shall retain the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements.
13. This enforcement action is exempt **from** the provisions of the California Environmental Quality Act (California Public Resources Code Section 21000 et **seq.**) in accordance with California Code of Regulations, Title 14 Section 15321.

  
Catherine E. Kuhlman  
Executive Officer

May 12, 2006